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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

CORAM : HON'BLE SHRI S.R. NAYAK, CJ.
HON'BLE SHRI V.K. SHRIVASTAVA, J.

WRIT PETITION NO. 35 OF 2001

Petitioners

1. Heera Singh Thakur, S/o Latkhor Singh Thakur, Aged about 55 years, Occupation Agriculturist, President Kisan Sangh Dondi Lohara, R/o Village Khartholi, Tehsil Dondi Lohara, District Durg (C'garh).
2. Ankaloo Ram Pisda, S/o Shri Amaroo Ram Pisda, Aged about 40 years, Occupation-Agriculturist, R/o Village-Deori, Tehsil- Dondi Lohara, Durg.
3. Yateendra Kumar Dewangan, S/o Shri Phool Singh Dewangan, Aged about 35 years, Occupation-Farmer, R/o Village-Dondi Lohara, Distt. Durg.
4. Kishori Lal, S/o Shri Amarnath Sao, Aged about 52 years, Occupation Farmer, R/o Village Kharthuli, Tehsil Dondi Lohara, Durg.
5. Awadh Ram, S/o Shri Shivprasad, Aged about 57 years, Occupation Agriculturist, R/o Sambalpur, Post Office Sambalpur, Tehsil Dondi Lohara, Durg.
6. Ashok Kumar Patel, S/o Shri Amol Singh Patel, Occupation President, Water Consumer Society Virid – 55095, R/o village Badagaon, Post-Badagaon, Tehsil- Dondi Lohara, Durg.
7. Bahur Singh Rawte, Sadasya,Zill Panchayat Durg, R/o Village & Post – Badagaon, Tehsil Badagaon, Durg.

Versus

Respondents

1. State of Chhattisgarh through the Secretary, Water Resources Department, Raipur.

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2. Engineer In Chief, Mahanadi-Godawari Kachar, Raipur.

3. Executive Engineer, Kherkhera Mohdi Pat Project, Division Durg.

4. Sub Divisional Officer, Kherkhara Mohdi Pat Canal Project, Sub-Division No.1, Village Sambalpur, Tehsil Dondi Lohara, District Durg.

Present: Shri Rajeev Shrivastava, counsel for the petitioners.
Shri Prashant Mishra, Addl. Advocate General for the State.

ORAL ORDER

(Dated 10th November, 2006.)

The following oral order of the Court was passed by **S.R. Nayak, CJ.** :

Shri Heera Singh Thakur and six others who are residents of Tehsil Dondi Lohara, Durg District, have filed this Writ Petition in a representative capacity under Article 226 of the Constitution of India. The petitioners have sought for a writ of mandamus to the respondents to construct the proposed distributory canal from Kharkhara feeder canal for irrigation and other ancillary purposes for the people of Dondi Lohara.

In the Writ Petition, it is stated that the people of Dondi Lohara eke out their livelihood by way of agriculture; the agriculturists produce kharif crop and for that purpose they require intensive irrigation, and since required irrigation is not provided, their right to life guaranteed under Article 21 of the Constitution of India has been violated. In the premise of the above pleading, the petitioners have prayed for the following reliefs :

> "7. **RELIEF (S) SOUGHT :**
> It is humbly prayed that this Hon'ble Court may kindly be pleased to grant the following reliefs :
>
> i) May call for the entire records from the respondents with regard to the survey carried out by the respondents for construction of minor canals

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from Kharkhara main feeder canal, Kharkhara Mohdi Pat Project, condition of the famine in the area and availability of the drinking water in the area.

ii) May also be pleased to direct the respondents to complete the construction of proposed canals from Kherkhara feeder canal for which survey has already been carried out and supply the water for irrigation to the inhabitants of the area.

iii) May further be pleased to direct the respondents to make arrangement for drinking water and other necessary facilities in the area so that the inhabitants of the area may fight with the drought and famine.

iv) May be pleased to prevent the respondents from constructing Kherkhara Mohdi Pat Canal, as it is contrary to the public interest, public exchequer and the same is being constructed at the cost of depriving the inhabitants of the area from right to life guaranteed to them under Article 21 of the Constitution of India."

The State of Chhattisgarh represented by its Secretary to Water Resources Department, Engineer-in-Chief, Mahanadi-Godawari Kachar, Raipur, Executive Engineer, Kherkhera Mohdi Pat Project, Division Durg and Sub Divisional Officer, Kherkhara Mohdi Pat Canal Project, Sub-Division No.1, Village Sambalpur, Tehsil Dondi Lohara, District Durg, have been arrayed as party respondents.

The respondents have filed return opposing the prayers. In the return, *inter alia*, it is stated that the lands in Dondi Lohara have been irrigated from Gonduli reservoir; the shortage in supply to the lands in Dondi Lohara cannot be supplemented from Kharkhara inasmuch as the lands of Dondi Lohara are situated in ascending height, and therefore, it is not feasible nor practicable to lift water from Kharkhara reservoir so as to irrigate the lands in Dondi Lohara. It is also claimed by the respondents that the allegation of the petitioners that due to the existence of Kharkhara feeder canal, the wells and ponds in Dondi Lohara area have dried up, is

factually incorrect. On the other hand, it is asserted that the areas in Dondi Lohara receive seepage water from Kharkhara feeder canal.

We have heard learned counsel for the parties. It was contended by learned counsel for the petitioners that the people of Dondi Lohara mainly consist of agriculturists whose livelihood depends upon agriculture income and due to shortage of required water to irrigate their lands, they suffer a lot and consequently their right to life guaranteed under Article 21 is impaired. It was contended that Irrigation Department has already conducted a survey about the feasibility of irrigating the lands in Dondi Lohara by constructing seven minor canals and, therefore, the State should be commanded to implement the proposals with earnestness.

Learned Additional Advocate General appearing for the respondent authorities, per contra, would point out that Kharkhara reservoir was executed essentially to supply water to the Bhilai Steel Plant in terms of the commitment made to it when the same was established decades back; it was never intended that water would be made available to the areas of Dondi Lohara for irrigation purpose from Kharkhara reservoir; in fact, the areas in Dondi Lohara have been irrigated by Gonduli reservoir; the petitioners have not made out any case for mandamus because they have failed to establish any enforceable right in them to seek such writ.

Having heard learned counsel for the parties, we are of the considered opinion that no case is made out for issuance of mandamus to the respondents to irrigate the lands in Dondi Lohara either by diverting the water from Kharkhara reservoir or from any other irrigation project existing or proposed. At the threshold, it needs to be noticed that it is neither constitutional nor statutory nor common law right of petitioners-

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agriculturists to insist that all their lands should be irrigated to their satisfaction. Irrigation project involves huge investment on the part of the State, which part of the State, which area should be irrigated and in what phases etc. all squarely fall within the executive power of State. The Court cannot dictate terms nor agriculturists could insist that their areas should be irrigated irrespective of the financial resources of the State. Article 21 rights do not include the right to receive water from the State for irrigation purposes and such a right cannot be culled out from Article 21. Though in activists and dynamic role, the Constitutional Courts have considerably expanded the contents and contours of Article 21 rights, there is no need for us to dilate on that aspect further, because, according to the State, the lands in Dondi Lohara are already irrigated by Gonduli reservoir and in addition, those lands also receive seepage water from Kharkhara Mohdi Pat Project. Of course, the above assertion was denied by learned counsel for the petitioners in the course of arguments. There is no need for us to undertake resolution of the above factual controversy. Suffice it to state that the petitioners have failed to demonstrate the obligation of the State and its authorities to irrigate all the lands in Dondi Lohara.

In the circumstances, we dismiss the writ petition. No costs.

Before parting with this case, we make it clear that this order shall not and would not come in the way of the State to execute necessary irrigation projects so as to properly irrigate the lands in Dondi Lohara area.

Sd/-
Chief Justice

Sd/-
Vijay Kumar Shrivastava
Judge

Raju